

APPLICANT:
Chester James Dawson

REQUEST: A variance to permit an addition within the required rear yard setback in the R2 District

HEARING DATE: February 7, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5579

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Chester James Dawson

LOCATION: 402 South Tollgate Road – Silver Spring Heights/Plat 2/23, Bel Air
Tax Map: 49 / Grid: 3A / Parcel: 650 / Lots: 150, 151, 152
Election District: Third (3rd)

ZONING: R2 / Urban Residential District

REQUEST: A variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to permit an addition to encroach into the 40 foot minimum rear yard setback (26 foot setback proposed) in the R2 District.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicant requests a variance to his rear yard setback to allow him to construct a 12 foot by 14 foot addition to the rear of his house to utilize as a kitchen. As the property is encumbered by a 40 foot minimum rear yard setback, and as the addition would be 26 feet from the rear yard lot line, a 14 foot variance is required.

Mr. Dawson identified his property as an approximately quarter acre lot located at 402 South Tollgate Road, Bel Air, immediately across from Tollgate Marketplace, with the Applicant's home facing the Giant food store. Mr. Dawson's lot actually consists of two and a portion of a third originally subdivided lots in an older development known as Silver Spring Heights. The lots together total 68.5 feet in width, and are 150 feet deep. Mr. Dawson described the elevation and topography of his property as gently rising from Tollgate Road. The lots are improved by a one and a half story dwelling, with a covered porch and an entry to the right side of the house. Mr. Dawson has owned and lived on the property and in the house for 44 years.

The house itself is relatively compact, containing one and a half bathrooms, two bedrooms, with an upstairs area used as storage.

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Mr. Dawson explained that the construction of an addition would give he and his wife extra living space but also, and perhaps more importantly, will enable Mr. and Mrs. Dawson to move the washer and dryer from the basement to the first floor level. This would eliminate the need to walk up and down the basement steps which Mr. Dawson described as more burdensome to he and his wife as they advance in years. Mr. Dawson additionally has had a series of back surgeries which have impacted his ability to move around the home.

Mr. Dawson explained that there is insufficient room on either side of his house to construct an addition. Attachment 4 to the Staff Report, which is the location drawing of the house on the lot, shows an approximately 9 foot separation of the house from the east/southeastern property line, and an approximate separation of 13 feet from the northwesterly property line. The northwesterly side of the house is also impacted by the driveway which extends approximately four-fifths the depth of the lot. Accordingly, Mr. Dawson believes that the only available location for the addition is to the rear of the home, which is otherwise unencumbered. Behind the home is located an empty lot.

Mr. Dawson believes there would be no impact to any adjoining property owner if the variance were granted. Mr. Dawson has heard no objection from any neighbor to the variance.

The proposed kitchen addition would be similar in appearance to the existing home. It would be constructed of white siding, with roof lines to match that of the existing home.

Next to testify was Moussi Abboud, who identified himself as the next-door neighborhood, living at 400 South Tollgate Road. Mr. Abboud apparently was objecting to the location of a fence constructed by the Applicant. Mr. Abboud suggested the fence was at least in part on Mr. Abboud's property. Mr. Abboud, however, had no objection to the granting of the rear setback variance.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune has concluded that the property is unique. The subdivision of Silver Spring Heights was created in the 1920's. The lots are 25 feet wide, with the Applicant owning two and approximately one-half of another lot. Furthermore, the Applicant's home is one of the smallest in its subdivision. It is located directly at the 40 foot minimum rear yard setback line, although the house could have been located closer to Tollgate Road. If it had been so located, no rear yard variance would be necessary. The house itself is approximately 80 feet off Tollgate Road, while the required front yard setback is 35 feet.

The addition would be, according to Mr. McClune, consistent with others in the area. Mr. McClune can find no adverse impact. The lot to the rear of the Applicant's property is vacant and would not be impacted. Neither Mr. McClune nor the Department believe that any additional landscaping is necessary.

There was no testimony or evidence presented in opposition.

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APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant and his wife have, for 44 years, resided in a house which is probably accurately classified as a “bungalow”. It has one and a half baths, two bedrooms, and a partial upstairs which is only utilized for storage. The house itself sits on a modest size lot, being approximately 68.5 feet in width.

Due, primarily, to the passing of the years, the Applicant now wishes to have more space in the house, in part to make room for the relocation of a washer and dryer from the basement to the first floor level. To do so he proposes a very modest addition, 12 feet by 14 feet in size, to be located to the rear of their home. However, as their house is located directly on their 40 foot rear setback line, a variance of 14 feet is necessary.

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It is important to note that the house could have been located closer to Tollgate Road, as the lot is 150 feet deep, and an addition could have been built in that event without the need for a variance.

The lot behind the Applicant's property is vacant. The next-door neighbor testified he had no objection to the use. The proposed addition would slightly increase the square footage of the Applicant's home and would certainly be in keeping with the neighborhood and with other similar properties in Harford County. The Applicant has made a showing, supported by a location plan, that such an addition cannot be located on either side of the home due to the narrow width of the lot.

It is, accordingly, found that the Applicant's property exhibits an unusual characteristic in that it is, at 68 feet wide, significantly narrower than many if not most single family lots which exist within the Applicant's neighborhood and in Harford County. The location of the house with respect to the rear property line also gives it an unusual characteristic in that the Applicant is unable to construct an addition to either side or to the rear without the variance requested. The hardship suffered by the Applicant would be his inability to construct an amenity similar to others in Harford County, and enjoyed by most other property owners within Harford County.

It is further found that no adverse impact will result to any adjoining property owner or to the neighborhood as a whole.

CONCLUSION:

It is, accordingly, recommended that the requested variance be granted, subject to the Applicant obtaining all necessary permits and inspections for the proposed addition.

Date: March 19, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on APRIL 16, 2007.